REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-8, 15, and 17-22 are presently active. Claim 2 has been amended by the present amendment.

In the Office Action, Claims 1 and 7 were rejected under 35 U.S.C. § 103(a) as unpatentable over Karasawa et al (U.S. Patent No. 6,320,234; hereinafter "Karasawa") and Givens et al (U.S. Patent No. 6,080,655) n view of Applicant's Figure 22. Claims 2-6 and 8 were objected to for being dependent from a rejected base claim but would be allowable if rewritten in independent form to include the limitations of the base claim and any intervening claims. Claims 15 and 17-22 were indicated as being allowed.

Firstly, Applicants acknowledge with appreciation the indication of allowable subject matter in Claims 2-6 and 8 and the indication of allowance for Claims 15 and 17-22. In order to expedite prosecution of the present application, Claim 2 has been rewritten to be in independent form to include the limitations of Claim 1. Accordingly, it is respectfully submitted that Claim 2 and Claims 3-6 and 8 dependent therefrom patentably define over the applied prior art.

Regarding Claim 1, the Office Action acknowledges that Karasawa et al do not teach that the first and second insulative films are oxides, and acknowledges that Karasawa et al do not teach that a silicon nitride layer on all upper surfaces of the first insulative film.[1] The Office Action then asserts that, in view of Givens et al, it would be obvious to one of ordinary skill in the art to incorporate the nitride layers of Givens et al into the device taught by Karasawa et al.[2] However, Applicants respectfully submit that, without impermissible hindsight gained from knowledge of Applicants' invention, it would not be obvious in view

[1] Office Action, page 3, lines 7 and 18-19.
[2] Id., page 3, lines 19-24.

of Givens et al that the silicon nitride was to cover the first insulative film and not the second insulative film or that the silicon nitride was to be interleaved with the first and second insulative film. Indeed, the court in *In re Mercier*, 185 USPQ 774 (CCPA 1975) stated that

> The board's approach amounts, in substance, to nothing more than a hindsight "reconstruction" of the claimed invention by relying on isolated teachings of the prior art without considering the over-all context within which those teachings are presented. Without the benefit of appellant's disclosure, a person having ordinary skill in the art would not know what portions of the disclosure of the reference to consider and ***what portions to disregard as irrelevant, or misleading***. See In re Wesslau, 53 CCPA 746, 353 F.2d 238, 147 USPQ 391 (1965). [emphasis added]

In the present case, Givens et al teach that:

> The substrate 10 also has a ***dielectric stratum 50*** in which conductive components are formed in accordance with the invention. The dielectric stratum 50 has a first dielectric layer 52 on the barrier layer 30, a second dielectric layer 54 on the first dielectric layer 52, and a third dielectric layer 56 on the second dielectric layer 54. The first and second dielectric layers 52 and 54 may be composed of selectively etchable materials so that the first dielectric layer 52 is an etch-stop layer with respect to the second dielectric layer 54 in the presence of a selective etchant. The third dielectric layer 56 may have a low polishing rate so that it forms a polish-stop layer with respect to other layers of materials that may be deposited onto the third dielectric layer 56 in subsequent process steps. The dielectric layers 52, 54 and 56 may each be composed of a different material, or the first and third dielectric layers 52 and 56 may be composed of the same material while the second dielectric layer 54 is composed of a different material. ***For example, the first dielectric layer 52 may be a first silicon nitride layer***, the second dielectric layer 54 may be a first silicon oxide layer and ***the third dielectric layer 56 may be a second silicon nitride layer***.[3] [emphasis added]

Thus, without knowledge of the Applicants' invention, Applicants respectfully submit that one would not know which of the silicon nitride dielectric layers of the dielectric stratum in Givens et al to apply to Karasawa et al, or whether or not (if the first silicon nitride layer was chosen from Givens et al) to apply the second silicon nitride layer. Only by impermissible hindsight reconstruction is one able to selectively pick and choose the elements of Givens et al to apply to Karasawa et al.

[3] Givens et al, col. 4, lines 23-43.

Hence, for these reasons, it is respectfully submitted that the asserted combination of Karasawa et al and Givens et al is improperly based on impermissible hindsight. Thus, Claim 1 and Claim 7 that depends from Claim 1 patentably define over the applied prior art.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Gregory J. Maier
Attorney of Record
Registration No. 25,599
Ronald A. Rudder, Ph.D.
Registration No. 45,618

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)

GJM:RAR:clh
I:\ATTY\RAR\AMENDMENTS\200504US\AM.DOC